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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 8.

OCTOBER TERM, A. D. 1902.

ANNA R. KEAN et al., *Plaintiffs in Error,*

vs.

THE CALUMET CANAL and IMPROVEMENT CO., *Defendant in Error.*

In Error to the Supreme Court of Indiana.

PETITION FOR REHEARING.

WILLIAM P. FENNELL,
COUNSEL FOR PLAINTIFFS IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

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PETITION FOR REHEARING.

MAY IT PLEASE THE COURT:

Now, again come plaintiffs in error, Anna R. Kean *et al.*, by William P. Fennell, counsel, and petition the court that a rehearing be granted in the above entitled case and as reasons, therefor say:

The court has failed to note the clear distinction between a state decision, based exclusively on the local law and one based in part, at least, on the Federal law.

1. The local law of Indiana, as stated in *Kean* v. *Robey,* is that:

2. If the bed of Wolf lake was not surveyed in 1834. it did not pass to the owners of the abutting lot owners.

Kean v. *Robey,* 145 Ind., 221.

State v. *Portsmouth Savings Bank,* 106 Ind., 459.

If it was surveyed it did pass.

Tolleston Club v. *State*, 141 Ind., 197.

3. But the question as to whether, or not, Wolf lake was surveyed in 1834, is to be decided by the Federal law. No court has ever held otherwise.

4. That question of survey being settled by the Federal law in the negative—as it must be—there being no established *corners* to which the lines could be extended,

5. Then the application of the local law to the facts thus established is in our favor.

Kean v. *Robey, supra.*

State v. *Portsmouth Savings Bank, supra.*

It was not necessary for my success to combat the theory upon which *Hardin* v. *Jordan* rested, viz.: that the question of *riparian rights* was to be determined by the local law, because *on that question* both the local law and the Federal law are identical, at least, in reference to *unsurveyed* lake beds.

Kean v. *Robey*, 145 Ind., 221.

State v. *Portsmouth Savings Bank*, 106 Ind., 459.

Gassam v. *Phillips*, 20 How., 372.

Niles v. *Cedar Point Club*, 175 U. S., 300.

By the Federal law the bed of Wolf lake was not surveyed in 1834,

Gassam v. *Phillips*, 20 How., 372.

Niles v. *Cedar Point Club*, 175 U. S., 300.

Shively v. *Bowcby*, 152 U. S., 10.

If not, then by both Federal and local law it did not pass to the owners of abutting lots. Cases above cited.

Defendants in error being plaintiffs below must recover upon the strength of their own title. So it does matter whether the lake bed was surveyed or not. And for the further reasons so cojently stated in the dissenting opinion.

I hereby certify that I verily believe that the reasons above given for a rehearing are sound in law and equity, and further, that they are not in conflict with the decision of this court in *Hardin* v. *Jordan*.

WILLIAM P. FENNELL,
Counsel for Plaintiffs in Error.